7-31-2012

Ulrich v. Bach Appellant's Brief Dckt. 39318

IN THE SUPREME COURT OF THE STATE OF IDAHO

DKT No. ~~39328~~-2011, TETON CV-2010-329

39318

THOMAS H. ULRICH AND MARY M. ULRICH,
HUSBAND AND WIFE,

PLAINTIFFS/RESPONDENTS,

VS.

JOHN N. BACH, AND ALL PARTIES CLAIMING TO HOLD TITLE TO THE HEREINAFTER DESCRIBED PROPERTY, AND ALL UNKNOWN CLAIMANTS, HEIRS, AND DEVISEES OF THE FOLLOWING PROPERTY: (SEE FILE FOR DESCRIPTION)

DEFENDANT/APPELLANT.

APPEAL FROM THE FIRST AMENDED JUDGMENT, ORIGINAL JUDGMENT AND ORDERS OF THE HONORABLE DARREN B. SIMPSON, ASSIGNED

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A. CASES: (Continued)

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STATEMENT OF THE CASE

Respondents THOMAS H. ULRICH and MARY M. ULRICH filed on August 31, 2010 a contended verified complaint, with two Exhibits A and B, consisting of 14 pages, Only respondent THOMAS ULRICH signed the so denominated verification. (R: 01-14)

Exhibit A was averrred to be "A true and correct copy of the deed to the Ulrich Property." (R; 3, 9-10) But the referenced deed was not signed by the stated trustees, who were grantors to the respondents, nor did such Exhibit A., referrenced, include nor make appellant nor his real property of 40 acres, known and referred to as "The Peacock Property" which on the date of the complaint's filing was owned in undivided interests by Milan and Diana Cheyovich of California, of an undivided one-fourth (¼) ownership, and the undivided remainder, of the undivided 3/4 ownership owned then by Appellant.

Exhibit B, attached was a notarized copy of a Corporation Warranty Deed, dated June 9th 1994, from TETON WEST CORPORATION, signed by its President GEORGE C. HATCH, as Grantor, conveying 40 acres to: "JACK LEE McLEAN, Trustee of the JACK LEE McLEAN family trust, as to an undivided one-fourth interest; MILAN CHEYOVICH and DIANA CHEYOVICH, Trustees of the CHEYOVICH FAMILY TRUST; as to an undivided one-fourth interest; WAYNE DAWSON, TRustee of the DAWSON FAMILY TRUST as to an undivided one-fourth interest; and TARGHEE POWDER EMPORIUM, LTD, as to an undivided one-fourth interest. . ." (R: 12-14)

"On information and belief," per paragraph 4 and 5, respondent THOMAS ULRICH averred that "Bach claims an interest in the following described real property located in Teton County, Idaho, and situate to the south of the Ulrich Property (the 'Bach Property');"

that "a true and correct copy of the deed through which Bach and others originally obtained right to the Bach Property is attached hereto as Exhibit B" . ."The named Defendants may also claim some right or interest in the Bach Property." (R: 03-4)

No other "named Defendants" were stated, designated nor made defendants to the complaint, nor ever referred to again.

Paragraph 8 of the complaint averred: "The Ulrich Property Easement is denoted in the deed to the Bach Property." (R: 04) No such designation, description nor statement is shown on Exhibit B, as "The Ulrich Property Easement." In fact, Exhibit B, dated June 9, 1994 was recorded in Teton County as Instrument No. 116461 and makes no mention, reference nor identification of the respondents in any paragraph or language. (R: 012-14) Moreover, Exhibit A, unsigned by the trustee grantor to the respondents is date filed December 11, 1996 (two years, six months and two days after Appellant's undivided title, joint venture, was recorded; Exhibit A, was file/recorded as Teton Instrument 125858. (R: 10-11) Such instrument 125858 makes no mention, reference nor identification of appellant nor of the other undivided one fourth owners trusts in the Peacock 40 acres. Nor does any averment in respondents' complaint so tie in or make appellant as a party or contractual thrid party to the respondents said real property acquired via Exhibit A.

The four (4) counts set forth in the respondents' complaint seek per I.C. 6-401, et seq quiet title to "the Ulrich Property Easement" and that its "dominant and superior to any right, title, claim or interest held by Defendants in the Bach Property": per COUNT I. In County II, respondents seek per I.C. 10-1201 et seq

"a declaratory judgment against Defendants declaring that Plaintiffs are entitle to a declartory judgment against Defendants declaring that Plaintiffs' right, title, claim and interest in the Ulrich Property Easement is dominant and superior to any right , title, claim or interest held by Defendants in the Bach Property." (TR 95)

Respondents' COUNT III is labelled "PRELIMINARY INJUNCTION" and averred:

> "16. Plaintiff Thomas H. Ulrich telephoned Bach on April 24. 1010 to inform him that surveyors would be presenton the Ulrich Property Easement to survey the easement to prepare for the improvements.
>
> 17. Bach repeatedly insisted that Plaintiffs have no easement abd threatened Plaintifff Thomas H. Ulrich that if surveyors entered onto the easement that he would call the sheriff's office and charge the surve yors with trespassing.
>
> 18. Any such interference and/or restriction of the Ulrich Property Easement will cause irreparable harm and injury to Plaintifffs. Plaintiffs are in the process of obtaining an approval for development of a subidvision from Teton County and such process requires the survey and improvement of the Ulrich Property Easement. Through this process, Plaintiffs are subject to upcoming deadlines before which the survey of the Ulrich Propery Easement must be completed. If Plaintiff cannot obtain a survey of the Ulrich Property Easement prior to such deadlines, Plaintiffs will be unable to complete their subdivision application and will be irreoarably harmed.
>
> 19. Plaintiffs are entitled during the pendency of this actionto a temporary restraining order and/or preliminary injunctionemjoining and restraining the Defendants frominterfering with in any manner and/or restricting the usage of the Ulrich Property Easement as a means of ingress and egress from the Ulrich Property, including but not limited to any interference with the surveying of the Ulrich Property Easement forpurpose of improving the easement in the future." (TR: 06-07)

Count IV of the complaint averred/sought a permanent injunction, and, without any other Count number, Plaintiffs sought

to recover their reasonable attorney's fees and costs per I.C. 10-12-10, 12-121, and I.R.C.P. Rules 54(d) and 54(e). (R: 07)

Also on August 31, 2010, Respondents filed a MOTION FOR TEMPORARY RESTRAINING ORDER, based upon the purported verified compliant, with a discussed date with the district court judge such motion would be heard September 7, 2010. (R: 015-18) But Plaintiffs and their attorneys failed to have Appellant personally saerved, nor did they attempt to serve nor ever serve any of the joint venturers named in Exhibit B of their complaint.

Respondents appeared before the district judge on September 7, 2010, no reporter was present to record the proceeding, but the court's minutes revealRespondents' attorney admitted that no personal service had been made upon Appellant Bach, and claimed his clients had a "P&Z issue" which required resolution, "all submitted by next week (or) would miss October hearing date." The district court held there was "No showing of immediate and irreparable loss if not decided in the next 10 days" & set a preliminary injunction hearing on September 17, 2010 at 10a.m. (R: 019)

September 9, two days after the hearing of Sept 7, respondents filed a MOTION FOR PRELIMINARY INJUNCTION. (R: 20-22)

On September 16, 2010 Appellant made a Special Appearance, Contesting Lack of Personal Service and Personal Jurisdiction via twO (2) filed documents:

1. MOTION FOR IRCP, Rule 12(b)(2)(4)(5); Rule 3(a)(1); Rule 3(b); Rule 4(d)(1), Etc., to Strike, Quash and/or Void Any Purported Service Upon Him, For Sanctions Against Plaintiff(s) and Counsel.
2. MOTION TO PEREMPTORILY DISQUALIFY THE HONORABLE GREGORY MUELLER, PER I.R.C.P. Rule 40(d)(1)(A)(B).

(SPECIAL NOTE: The foregoing two two (2) motions filed by Appellant September 16, are attached hereto as Augmented Clerks Transcripts, which per Motion to be made via I.A.R., Rules 30(a), Rule 30.1 30.2 and 32(c)(d), are referenced/identifies hereafter as "Aug R;"(then the pages or pages where they are inserted, can be found or disclosed.)

As part of Appellant's Special appearance motion, were two affidadivts, one of Gary Brett Byington, Ammon, Idaho, who was asked by Appellant to take care of Appellant's "animals, horses, dogs,etc., while (Appellant) went to Southern California for a personal family trip and occasion", but Brett Byington had not nor did not "ever reside, dwell or live in Teton County" with Appellant on the two dates and occasions, that a purported neighbor handed to Brett Appellant's supposedly mail in a large white postal priority sealed envelope. Brett Byington was "not empowered nor authorized to open" such envelope and left it for Appellant. (Aug R:

Per Appellant's INITIAL MEMORANDUM, in support of his specially appearing motions, he cited two (2) Idaho Supreme Court cases which required the "VOIDING" of such inadequate personal service efforts, to wit: Herrer v. Estay 146 Idaho 674, 201 P3d 647 (2009) and Marco Distrib., Inc. v. Biehl 97 Idaho 853, 555 P.-d 393 (1976). Appellant also argued in said initial memorandum that respondents violated IRCP, Rule 65(A)(1) required as due process and equal protection rights of Appellant, citing Lawrence Wholesale Co. v. Rudio Lumber Co. 89 Idaho 389, 405 P.2d 634. (Aug R:

On September 17, 2010 at 1);)5 a.m. before the district court judge, all motions cam for hearing. As mo court reporter was present, the minutes of said proceedings are set forth at (R:23-28. Appellant requested ("wanted") a full hearing as to motion on special appearance. (R: 28 Respondent's attorney asked permission to have court bailiff persoanly serve Appellant with purported pleadings (handed to bailiff in a sealed envelope, which remained unopened until the bailiff placed the envelope in front of appellant. Appellant objected to such irregular service (R: 24). Even the judge did not see/know but assumed what was in sealed envelope. (R: 25-26)

The district court judge would not accept appellant's peremptory disqualification of him, and proceeded asking questions to determine whether as such judge, being disqualified, such disqualification motion was to hinder, delay or obstruct justice. The judge found that such "motion was timely and appellant was entitled to relief." Such judge disqualified himself per IRCP, Rule 40(d)(1) and recessed the hearing. (R : 27-28)

An ORDER OF DISQUALIFICATION was filed September 17, 2010, but no time of its filing was entered. (R: 29) On September 20, 2010 an ORDER OF ASSIGNMENT was entered, the case referred to the Honorable Darren B. Simpson, District Judge for further proceedings. (R: 31) On September 21, 2010, attorney for respondent filed a recorded LIS PENDENS (Notice of Pendency of Action) (R: 32-34) No copy of said Lis Pendens was mailed, nor served upon appellant.

Early afternoon Appellant, specially appearing, filed: a "NOTICE OF MOTIONS and MOTIONS re: 1. MOTION TO DISMISS WITH PREJUDICE, IRCP, Rule 12(b)(6), etc.,; 2. MOTION FOR SUMMARY JUDGMENT, IRCP, Rule 56(b)(c); 3. Alernatively , MOTION FOR MORE DEFINITE STATEMENT, Rule 12(c); & MOTION FOR SANCTIONS, COSTS AND FEES AGAINST PLAINTIFFS and THEIR COUNSEL, Rule 11(a)(1), ALL FOREGOING MOTIONS RE REQUESTED SUA SPONTE," noticing for Oct. 15. (Aug R:

The last paragraph of said Notice of Motions stated;

> "Defendant also moves hereby to strike any motion for preliminary injunctions, etc., as presented, infra . .(as) no viable claims, no verification exists nor is basis presented, (no) admissilbe or probative evidence was ever presented . . to have allowed Judge Moeller to consider issuing any OSC re temporaryrestraining orderss ket akibe even hearing any request for preliminary injunction." (Aug R:

Within the memorandum Appellant further raised:

> "Foremost. equitable jurisdiction (quiet title/injunctive relief) will not be accorded, nor considered as within the jurisdiction of this Court 'when anadequate legal remedy is available.' Iron Eagle Development, LLC v. Quality Designs Systems, Inc. 134 Idaho 357, 65 P.3d 509, 514 (2009). ." (Aug R:

> Appellant's pointed out Respondent's Exhibit A was not notarized by the designated trustee and was void; concluding: respondents "cannot comply with the pleading and evidentiary requirements. citing Read v. Harvey (2009) 147 Idaho 364. (Aug R:

> Appellant's memorandum lastly objected to and argued that "There is no probable, nor credible basis nor formal offer of proof by plaintiffs. . .to show their standing, capacities nor NON running of all statutes of fraud, limitations, collateral estoppel issue and claim preclusions, etc. As a matter of fact and law, the present filing of such complaint is in bad faith, (with) unclean hands and flagrant legal ethical misconduct." (Aug R:

The district court's Minutes of the hearing on motions, before Judge Darren B. Simpson; such Minutes are as set forth in (R: 35-48) At the outset of the hearing, could not find an original order--"order is not in original court file not in is it

in the file that maintain(ed) in Bingham County nor does it a-pear it has been entered in the ROA." (R: 36)

After further review of the clerk's court file, arguments of whether affiant was personally served and considering the Affidavit of Linday Moss, the court decide that "Return of Service appearsto comport so is determination (Appellant) was in fact served with the documents" with the judge deciding "will hear in objection to Storer's motion". (R: 37-38) Without any testimony respondent's counsel argued the introduction of his then marked EXHIBITS, A, with new added page, B and D, etc, which respondent's counsel argued: "does not go to adimissibility-not revelant" Relevant to preliminaryinjunction; grantee isslightly different." (R: 39-40) Another Exhibit PX C "offered for illustration purposes, appellant objected "not illustration of anything that has been resolved-to set out road that isn't there," also "Lack of foundation" but respondent's counsel states that "red dotted line illustrates the easement"; the Judge admitted said Exhibit PX C for illustrative purposes without even hearing any testimony, foundational showing nor credibility to admit. (R: 40)

In the testimony presented via by the only witness called by respondent, Michael Quinn, professional engineer; and during the questioning, objections and answers of Michael Quinn, Appellant "moves for an order and Judgment of Dismissal of request for preliminaryinjunction." (R: 41-43) Appellant frequently objected to thetestimony on the basis of no subject matter jurisdiction, statute of limitations of 5 years and respondent having "adequate remedies at law". (R: 44) Appellant wanted a bond of$100,000.00 if preliminary injunction is granted and striking of presently ordered injunctive orders protecting is property. (R: 45-46)

On October 29, 2010 at 1:59 p.m., a MEMORANDUM DECISION re: PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTIN AND DENYING BACH'S MOTION TO DISMISS, MOTION FOR SUMMARY JUDGMENT, MOTION FOR MORE DEFINITE STATEMENT, and MOTION FOR SANCTION, COSTS AND FEES, of 25 pages (R: 47-73) along with/attached thereto EXHIBIT A, being an ORDER GRANTING PLAINTIFF WAYNE DAWSON'S MOTION FOR RELIEF FROM JUDGMENT, in Teton CV 2001-265, filed October 29, 2010at 1:04 p.m, of 21 pages (R: 73-94) and EXHIBIT B, being a copy of SECOND AMENDED JUDGMENT, in Teton CV 2001-265, filed October 29, 2010 at 1:04 p.m., of 3 pages, (R: 95-99) were filed.

Also on October 29, 2010 at 4:19 p.m. an ORDER GRANTING PRELIMIARY INJUNCTION was filed (TR:100-104), teo (2) minutes after it was signed by Judge Simpson. (R: 103)

(NOTE: These two documents, said MEMORANDUM Decision and ORDER GRANTING PRELIMIANRY INJUNCTION, are two (2) challenged errors on/in this Appeal and will be addressed, infra, in detail and specificity.)

On November 16, 2010, at 4:44 p.m., Appellant filed his VERIFIED ANSWER AND COUNTERCLAIMS, conssiting of 11 pages. (TR: 105-115) Per said VERIFIED ANSWER AND COUNTERCLAIMS, appellant prefacing paragraph stated:

> "COMES NOW JOHN N. BACH, still preserving all special appearancs herein made, and asserting his opposiiton and objections to the subject matter and personal jurisdictions claimed and even temporarily found by the court applying herein, and does hereby, alternatively answer, deny and oppose the purported singularly verified complaint by solely Plaintiff Thomas H. Ulrich, who is without standing, capacity or validity to speak for, act or represent his claimed wife, MARY M. ULRICH, as not (in) compliance on her behalf per the Idaho Satute of Frauds, written power of attorney or agency, has been stated, made or contained anywhere within said complaint as presently, on file herein. (R: 105)

Under his answers, paragraph "A. DENIAL OF GENERAL ALLEGATIONS", appellant by/per his subsequent paragraphs 1 through 4 (TR: 105-107) deny all allegations of respondents' complaint. Per the last appellant's statement in his pargraph 5 and his paragraph 5, following he denies "that THOMAS H. ULRICH or his his nonappearing wife, have any rights, entitlement or claims/causes of action for relief or redress as sought per paragraphs A, B, C, D, E, F & G of his said prayer.

> 5. Answering , opposing and objecting to the purported VERIFICATION, of the complaint on page 9, thereof, denies and objects (to) each contended compliance statements and/or that form and manner of notarization, is inaccurate and incorrect (not) personal knowledge of Thomas H. Ulrich." (TR: 107)

Appellant, per his paragraph "B. AFFIRMATIVE DEFENSES TO EACH AND ALL COUNTS I, II, III & IV", sets forth in 13 subparagraphs his affirmative defenses. (TR: 107-113) (The verified averments of appellant in his paragraph "B", subpararaphs of: "B, 4," (Statute of Frauds); "B, 5" (Statute of Limitations); "B, 6" (failure of compliance with I.C. 5-238); "B, 7" (liability of acts, conduct and deceptive representations and barred per respondents doctrine of laches); "B, 8," (unclean hands, unwillingess to do equity , failure to comply with express and implied covenants, duties and obligations of good faith, fair dealings and lack of evasions, deceptions and untruthfulness of averments, etc., as further delineated in subparagraphs d) through f) (TR: 116-117); "B,10, "(application of adverse possession, prescriptive use and restrictions, the plaintiffs accepted, agreed to and did bind, commit and obligated themselves to the complete ownership. .of John N. BACH.") are averred more completely in (TR: 108-111).)

Appellant's paragraphs "B, 11, 12 & 13, of his affirmative defenses stated/averred under penalty of perjury of his own personal knowledge that:

> "11. As a direct, legal and resulting application of the foregoing affirmative defenses, per paragraphs B. 1, through 10, supra, plainti(ffs) and each of them , alternatively , jointly and most restrictively, are subject to the doctrines of: (a) promissory estoppel; b) estoppel in pais; c) quasi-estoppel; d) waiver or abandonment, and/or extinquishment of any claims or rights to be asserted for any 60 foot acess-egress or any other use easement across not just the most westerly portions of said 40 acres but not any easements, prescritpive rights, privileges or uses over or upon the entire 40 acres, which said 40 acres were not only substantially fenced, enclosed and physically barred from access, but earning, no trespassing signs, violators would be prosecuted and those that survivied would be shot again, were constantly and continoulsy posted and replaced.
>
> 12. There is another legal actions pending, not yet finalized as to the most current ruling and second judgment rendered in Teton CV 01-265, which deals most directly and immediated of the possible further claimants of ownership to said 40 acres and said contended plaintiffs' right to a 60 foot westerly easment. Such litigation and ruling/second judgment have been served upon plaintiffs herein, but they have shown no concern of the legal effects and controlling aspects of said Teton CV 01-265 nor have plaintiffs made any efforts to serve not just such named parties in Teton CV 01-265, (which) are indispensible parties, among such being Milan and Diana Cheyovich, who in said Teton CV 01-265 are stated to own an undivided one-fourth ownership is said 40 acres. Until such service of indispensible parties is accomplised and this action is consolidated with Teton CV 01-265, this court will be severely prejudiced, and the rights of defendant herein further prejudicially unresolved with finality. Due to the current lack of service upon indispensible parties known to plaintiffs and the lack of consolidation and joinder herewith of this action and Teton CV 01-265, defendant reserves unto himself further rights of amendments to these affirmative defenses and the counterclaims which he, infra, avers.
>
> 13. Defendant prays that plaintiffs are precluded from continuing in any capacities or standing with this lawsuit until they have served all indipsensible parties and filed appropriate motions for joinder of their claims to that of Teton CV 01-265 and then, in such event, they be granted absolutely no relief, legal or equitable, no costs, no award of attorneys fees, and that they and their counsel be sanction(ed) for violations of Rule 11(a)(1) and 11(a)(B)(2) and per the inherent powers of this court for pursuing a specious, frivolous, vexatious and without merit lawsuit." (R: 112-114)

Besides the foregoing affirmative defenses put squarely in issue by appellant's verified answer and affirmativem , defenses, his "C. COUNTERCLAIMS AGAINST PLAINTIFFS" (R: 113-116) appellant incorporated by reference per paragraph "C, 1, per I.R.C.P, Rule 13(a) (and also Rule 10(c),) all of his statements and averments of his Paragraphs A. 1, through 5, B., 1 through 13, as part of his Statemens Facts, per Rule 8, est seq and Rule 9(c)(d), et seq against "all plaintiffs, their counsel, surveyors and consultants." (R: 113)

Under, and per appellant's verified paragraphs "C., 4., through 6., (R: 114-115) he set forth more specific counter-claims/counts seeking recover, quiet title and damages, to wit:

> "3. Counterclaim JOHN N. BACH has been defrauded, deceived and had his property and portions and rights of possession, use, occupancy and quiet maintenance, coverted, destroyed and trespassed by each and both of the plaintiffs for which he seeks full monetary and compensatory damages,
>
> 4. Counterclaimant JOHN N. BACH seeks an order for quiet title completely tohimself on/as to anu such claimed 60 foot easement by plaintiffs, the entire remaining 40 acres, to which/but only an undivided three fourth ownership is to be confirmed and to no one else. . .
>
> 5/. Counterclaimant JOHN N. BACH, seeks damages and other injunctive/equitable relief for the plaintiffs and each of their breached of the implied/express covenants of good faith and fair dealings, finding further that per the equitable doctrines set ofrth in the foregoing incorporated affirmative defenses, plaintiffs are barred by each, all or any of said defenses, and are precluded from continuing with their counts herein or any other legal action seeking to deprive counterclaimatnt of any right, title, ownership or interests other than as he has averred, seeks and requests relief from this Court.
>
> 6. Counterclaimant incorpoates all of the paragraphs C., 1 through 5, supra herein and seeks that he be awarded damages and amelioratory relief for the intentional interence, by plaintiffs of his existing contractual rights with the Cheyovichs and others, his prospective and economic relations and advantages, developments, etc., of said 40 acres he has lost or sustained by plaintiffs/counterclaim defendants ULRICH's tortious conduct." (R:114)

Appellant's prayer and verification are set forth in TR: 114-115)

(SEE NOTE 1, infra.)

Respondents' REPLY TO COUNTERCLAIM was filed Dec. 3, 2010. (TR: 116-121)

A MINUTE ENTRY was filed January 11, 2011 at 4:49 p.m, re a Jan. 7, 2011 Telephone Status Conference, all parties herein appearing telephonically, wherein the district court set the Pretrial Condernce for Friadya, May 6, 2011at 1:30 p.m. and "the Court Trial lasting for three (3) days from June 8, 2011 thourgh June 10, 2011, both hearings to be heard in Teton County." (TR: 122-124)

On March 12, 2011, Respondents' MOTION FOR SUMMARY JUDGMENT was filed, supported by Thoms H. Ulrich's Affidavit in SUPPORT plus the Memorandum filed therewith. (TR: 115-118) The AFFIDAVIT OF THOMAS H. ULRICH, had attached to it, six (6) exhibits, to wit: Exhibit A, copy of a deed transferring title to the Ulrich Property, as defined in the Verified Complaint from Philip J. Sarasqueta and Marilyn R. Sarasqueta, husband and wife, and Louisa S. Saraqueta, Trustee of the Sarasqueta Living Trust, dated October 30, 1990 to Thomas H. Ulrich and Mary Ulrich, husband and wife;" Exhibit B, a copy of deed transferring title to an additional 30 acress of propery, adjacent and contiguous to the Ulrich Property (the "IRA Property"), from (the same

NOTE 1: July 26, 2010 Appellant received an ORDER, in Supreme Court, DKT No. 39318-2011 Teton Co. No 2010-329 denying his Petition/Motion For Imposing Extraordinary Appellate Procedure, I.A.R. Rule 42, JOINING and CONSOLIDATING APPEAL DOCKET NO. 39318-2011, TETON CV-2010-329. Appellant in Supreme Court Docket Nos 38370-2010, has filed a Petition for Rehearing and submitted/filed a Memorandum Brief in Support thereof; appellant therein has raised, argued and submitted that Judge Darren B. Simpson, neither had the jurisdiction, any authorized or empowered discretion toenter Oct. 29, 2010 his SECOND AMENDED JUDGMENT therein. There is no final decision/order in said Dkt 38370-2010.

grantors as EXHIBIT A, to both respondents as husband and wife); Exhibit C was a copy of title insurance (of Exhibit A real property) which was dated Dec. 11, 1996, 10a.m. which excluded "4. Lack of a right of access to and from the land"; Exhibit D, a copy of title insurance (of Exhibit B. real property) which was dated Dec. 11, 1996, 10:07 a.m, which excluded "4. Lack of a right of acess to and from the land"; Exhibit E, copy of a deed from Teton West Corporation to the Sarasqueta, husband and wife and the trustee (predecessors interest to the Sarasqueta Living Trust dated June 9, 1994, BUT NOT RECORDED AS INSTRUMENT 116576, on "JUN 17, 1994"; and Exhibit F, copy of CORPORATION WARRANTY DEED, dated "JUN 14, 1994", as INSTRUMENT 116461, from TETON WEST CORPORATION, a Nevada Corporation, doing bsuiness in Idaho, (transfering the 40 acres parcel, identified as PEACOCK PARCEL, to: "JACK LEE McLEAN, Trustee of the JACK LEE McLEAN FAMILY TRUST, as to an undivided one-fourth interst' MILAN CHEYOVICHand DIANA CHEYOVICH, Trustees of the CHEYOVICH FAMILY LRUST, as to an undivided one-fourth interest; WAYNE DAWSON, Trustee of the DAWSON FAMILY TRUST, as to an undivided one-fourth interest; and TARGHEE POWDER EMPORIUM, LTD, as to an undivided one-fourth interest. ." (R: 135-164) (NOTE 2.)

(NOTE 2: respondents' motion for summary judgment did not seek any summary judgment on the affirmative defenses and counterclaims raised by Appellant's verified ANSWER AND COUNTERCLAIMS: rather in the last paragraph 4, by respondents they asked: "For an Order from the Court dismissing all of Defendant John N. Bach's counterclaims against Plaintiffs", without submitting any notice of hearing on such ambiguously phrased request for dismissal and without and submitted any points or authorities to grant such motion to dismiss which was way dilatory to make

under I.R.C.P,, Rule 12(b)(6).) (TR: 126) In fact, the last full paragraph of respondents' motion for summary judgment, did not mention at all or submit a memorandum on any motion to dismiss. (TR: 127)

March 25, 2010 Appellant filed his AFFIDAVIT . .RE OBJECTIONS AND OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, consisting of 12 pages (R: 168-179) to which were attached: EXHIBIT 1., certified copies of a JOINT VENTURE AGREEMENT AND LIMITED POWERS OF ATTORNEY TO CLOSE ESCROW, entered into by the four joint venturers owners via their family trusts and appellant's business name Targhee Emporium Emporium, Ltd.,(TR: 180-183) which was recorded Jun 14,1994, at 4L30 p.m.; EXHIBIT 2, a copy dated April, 2009 of "IMPROVEMENT PLANS FOR GROUSE LANDING TETON COUNTY, IDAHO" prepared for respondents, showing an already existing 60 foot county road and utility easement, to the North-West corner of respondents approximate 39 acres, and such 60 foot County road and utility easementsoutherly along/into respondents said 39 acres for approximately 3/4s of its length; (TR: 184); and EXHIBIT 3 , #pages of six (6) colored photographs showing the fencing, enclosing fences, keept out and no trespassing signs, restrictions and planted trees and gates along the western and and around the appellant's said 40 acres known as Peacock Property.put up since its purchase in June/July 1994 and in place when and after respondents came to visit appellant and his wife, in late summer 1994, which remain in place to this very date.(TR: 186-189)

The following 3 pages are outlined facts of appellant's Affidavit.

OUTLINES OF APPELLANT'S AFFIDAVIT

Par.11: He's only defendant/counterclaimant served by respondents; his verified ANSWER& MANDATORY COUNTERCLAIM is incorporated. (TR: 169)

Par 2: No affidavit from Mary M.Ulrich; no power of attorney nor written authority for her husband to bind her. (TR: 169)

Par.3: Attached Deft Exh. "1", certified copy of Teton Insrument No. 11642, entitled "JOINT VENTURE AGREEMENT and LT POWERS OF ATTORNEY TO CLOSE ESCROW, incorporated. (TR: 169)

Par 4: Since purchase of 40 acres, known as "PEACOCK 40 Acre Parcel", he's been controlling owner, manager, residential occupier, with street address: 4000N, 1520E, Tetonia, but mailing address of P.O. Box 101, Driggs, ID 83422. (TR: 170)

Par 5. Peacock Parcel plus a 8.5 acre parcel, re known as Zamona Casper Parcel, currently subject of pending appeal, (Dkt No. 38370-2010), wherein Judge Simpson rendered Oct. 29, 2010, a ORDER GRANTING PLAINTIFF WAYNE DAWSON'S MOTION FOR RELIEF FROM JUDGMENT (21 pages) and SECOND AMENDED JUDGMENT (2 pg)(TR: 170)

Par. 6: The Appeal in 38370-2010, per the foregoing ORDER GRANTING WAYNE DAWSON's MOTIONFOR RELIEF FROM JUDGMENT and SECOND AMENDED JUDGMENT rendered without notice and holding of any hearing, thus violating appellant's rights, and is "unfathomable and impermissible", revealing Judge Simpson's nonjurisdictional, wilful deliberate misstatements per said ORDER and SECONDED AMENDED JUDGMENT, per Idaho statutes and U.S. Federal Supreme Court standards of both the actual presence of bias and the reasonable man appearances of his bais againsat appellant. No appeal ever filed , nor could it be, that the ORDER dismissing Wayne Dawson's and Jack McLean's complaint, in Teton CV 01-265, with Prejudice, can now without any subject matter jurisdiction, being final Judgment, be, in this action. be redone or modified, where such is nonexistent procedure,. (TR: 170-172)

Par 7: Judge Simpson's inappropriate evaluation of Affiant's appeal rights in 38370-2010, his actions, statemetns and evaluations, all incorrect in said appeal, "are not merely appearances of prejudice but actual prejudices, extra judicial and without jurisdiction, which require his disqualification and recusal, as matter of law and undenialable facts, nunc pro tunc, herein. (TR: 172)

Par 8: Before appellant's and joint venturer's purchase of Peacok Parcel he with Jack McLean & John Brewer realtor for Trout Teton Ranch and The FAmily Hatch Trust, walked along westerly boundary of 40 acre parcel saw in place, above ground an east valley electricity trunk line all along westerly boundary, which along with telephone utlity service "already in place for the land uses to north and west of Peacock 40 acres pracel and to the North of it. (TR: 172)

Par.9: Just to the NW of Peacock Parcel, within 100 feet, was a large

electricirrigation pump accesible via an easement eminating from (county) road 500N; this easement did not go/nor extend to any part of Peacock Parcel. Upon terms of purchase of Peacock, (as in EX.) (R: 180-182) Affiant "erected barriers and posted signs; along NW corners, Nly boundary, SW cornderand SW corner & Sly boudary, of "NO Access allowed", "No TRESPASSING", "Keep OUT", and "NO HUNTING";from thereon, affiant would twice monthly check and maintain the access barriers and warning signs. Winter snow depths on said Peacok parcel, were 24-30 inch depts; no trees no wind barriers on 40 acres until June, 2004. (R: 172-173)

Par 10: The claimed easement of access along inside Westrly boundary of Peacock, was per the advis of realtor John Brewer, which "was to protect the 4 joint ventuers personal& their trust's development of their indivisible& undivided one-quarter ownership, to especially comply with then Teton County's newly being formulated zonging and planning code re family owned land splits. No understanding was reached of a 60 foot easment, either with said Joint Ventue of Spendthrift Trusts, nor was any 60 ft easement every agreed "to access any land or parcels north of or adjacent to the North of Peacock," which Peacock Parcel did not haveany irrigation rights granted to it via the large agricultural well, nor from Hogg Canal furtherly north of it, nor from South Leight Creek branch going SWly into/becoming Dry Creek or Bear Creek. (R: 174

Par 11: There was not any Ulrich Easement existing as contended by Plaintiffs, Attached EX. 2, solely for illustrative purpose is a 4/22/09 drawing of plaintiff's engineers for Grouse Landing, which reveals plaintiffs' parcel was already accessed via roads and utilties, underground, via roads in place to it, by owners/developers STILLWATER RANCH SUBDIVISION, (from county road 500N). R: 174)

Par 12: Affiant did know of respodents until late July/early August2004, when they drove up 400N onto the roadalong affiant's Southern boundary (called Summit View) (R: 8)

Par 13. On theirs first meeting plaintiffs drove past wooden posts, rails and and existing gate with "No Trespassing , Keep Out and Stay Out, etc. signs posted by affiant, Steve Ulrichasked for permission to travel over the easterly portion of Peacock so as to reach some 6plus double high beehives, located in middle of Ulrich's property which was in a Dept of Agriculture CRP progams, "Affiant only gave very restricted access verbaly withdrawable at any time, and only when Ulrich would stop and ask again"for such permission from affiant or his wife. No other person were given "such restrictive and limited access." Affiant had in place his obstructingfences, rails, barriers and gateswith No Trespassing signs/warnings." (R: 176)

Par 14: On this initial meeting and during plaintiffs' mid to late summer visits, Affiant informed plaintffs he woult not allow any other access and told plaintiffs of several civil action involved in that he obtained injunctions against various defendants, who had trespass over first 100 feet of his westerly boundary and he would be installing more permanent and secure gates w/i said 100 feet

to protect hiw wife and himself, as they had been threatened to be severly threatened to be killed, beaten or maimed by various defendants in existing lawsuits. Plaintiffs made no objections nor any opposition to affiant's access restriction, barriers, fences or gates. Plaintiffs used animal trails to reach their beehives, within an hour or so, the left going past then existing fence barriers and warning signs. (R: 0176)

Par.15: Through summer of 2008, plaintiffs twice visited their beehives, "alwaysstopping at Affiant's mobilehome to ask permission, and , leaving honey filled trays for Affiant and his wife" During these stops "plaintiffs both would ask questions and inquire about the permaent injunction Affiant had obtained against such threatening defendants in the pending TEton civil actions. By May 2006, affiant had erected more permanent barriers, placed signs, planted trees, shrubs and positioned large rocks obstacles and barriers, etc., (Described are no of fences, sight and winde barrirs, gates, , amred signs with some 20-30 pairs of skis etc) In last 2008 visit by Plaintiffs asked affiant how severe winters were and travel concerns if they proceeded to build a vacation home on their parcel; that Mr. Barlow, developer of Stillwater Subdivsions, to west and north of their property "had provided several complete accessible roads and complete underground utilities/services to their parcel, from Road 500N, with further access through and via other subdivisions." Plaintiffs never discussed any commercial or subdivsion plans or implementations thereof, on their property but "only for their personal seasonal vacation home. (R: 176-177)

Par 16: In late June, 2009, Affiant visited in front of his mobile home byThomas Ulrich, in full view of all of all such improvements, fences, gates, barriers and no trespassing signs, etc. Ulrich inquired if affiant would "agree to grant him a 25-30 easement of access only within Affiant's westerly boundary to an area on his parcel where he wanted to build a seasonal residence." Affiant said "NO!" and told Ulrich he already had access from 500N, renumbered 5000N, questions Ulrich's reasons and motives for 25-30 easement request, stating "stating in no uncertain terms, .there was no easement nor would he consider such requested 25-30 foot easement." (R 1779178)

Par 17: Attached are several color phots(Exhibt 3 attached)whic depict and accurately reveal appearances of "most southwesterly fences, signs, barriers, etc. which Thomas Ulrich saw on his said June 2009 visit. On said June 2009 visit by Ulrich, discussed with Affiant was the "untimely and wrongful death of Affiant's wife, Cindy, while under the care of Teton Valley Hospital (in Driggs), her death occuring either on late Nov. 7, or early Nov. 8, 2008," and that "June 28, , , ,affiant was effected by a stroke, throbotic complete." (R: 178)

Par 18: Plaintifffs have never given notice to affiant of their application for their residential or other subdivision plan, nor had the Teton County Planning Department until affiant had been served with a notice of a hearing about a month ago "which never took place." (R: 178)

Appellant's notarized siggature is set forth on R: 179.

ISSUES IN THIS APPEAL

1. LACK OF PERSONAL AND SUBJECT MATTER JURISDICTION ;

2. COMPLAINT'S FAILURE TO STATE ANY CAUSE OF ACTION.

3. REQUIRED DISQUALIFICATION, RECUSAL OR REMOVEL ASSIGNED DISTRICTCOURT JUDGE.

4., ERRORS OF FACT AND LAW (AMONG CONTUMACIOUS REFUSAL) BY DISTRICT COURT JUDGE TO REQUIRE RESPONDENTS TO PURSUE THEIR AVAILABLE, ADEQUATE AND IMMEDIATE LEGAL REMEDIES.

5. ERRORS, ABUSE OF DISCRETION, TO AWARD ANY ATTORNEYS FEES OR COSTS TO RESPONDENTS.

PREFACING ARGUMENTS TO ALL APPEAL POINTS

Appellant's NOTICE OF APPEAL filed October 24, 2011 was timely. (R. 272-277) Although the original JUDGMENT of June 6, 2011 was modified by the FIRST AMENDED JUDGMENT of October 21, 2011 extended the June 6, 2011 JUDGMENT to include and provide:

> "The Ulrichs' shall recover the following from Bach; attorney fees in the amount of $25,366.72; costs as a matter of right in the amount of $219.00; and discretionary costs in the amount of $35.000. Such fee and c costsamounts, totaling $25,620.72, shall accrue interest at the legal rate of interest for judgments fr om the date of entry of this First Amended Judgment until such amount, plus accrued interest, has been paid in full." (R: 280, 267-272)

Respondents via such FIRST AMENDED JUDGMENT, along with WAYNE DAWSON and the very deceased JACK LEE McLEAN, have in two (2) appeals, Dkt. 38370-2010 and Dkt. 34712-2007 (35334-2008), along with respondents herein, have taken three (3) bits of the festering and regurgitating "apple" of lack of jurisdiction and "VOIDNESS."

If just the first two APPEAL ISSUES are decided in Appellant's favor, reversing the FIRST AMENDED JUDGMENT, including the very suspect and frivlous award of attorneys' fees, costs and any further cited by respondents herein, then there will be established that thedistrict court failed to correctly and legally apply the mandatory requirements of I.R.C.P, Rules 56(a) through 56(e), that said FIRST AMENDED JUDGMENT and this APPEAL have not been pursued frivolously or unreasably. Butters v. Validez (Id App 2010) 241 P3d 7. Moreoever, Appellant before the district court and in this Appeal cannot be shown to have "acted without a reasonable basis in fact and law. Hoffer v. City of Boise, (Idaho 2011) 257 P.3d 1226, 1229.

ARGUMENT AND AUTHORITEES RE ISSUES ON APPEAL

L. LACK OF PERSONAL AND SUBJECT MATTERS JURISDICTION

The very initial question, as to the standing or capacity of appellant is: IS HE SUED, NAMED AND SERVED AS A SOLE INDIVIDUAL DEFENDANT OR AS ONE OF OTHER JOINT VERTURERS AND OWNERS OF THE PEACOCK FORTY ACRE PARCEL?

In Exhibit B, attach notarized copy of a Corporation Warranty Deed, dated June 9, 1994, from Teton WEST CORPORATION, conveying 40 acres to the there named trustees of family trust, McLean, Cheyovich and Dawson, and TARGHEE POWDER EMPORIUM, LTD, each granted to have and own at that time of acquisition an "undivided one-fourth interest (R: 12-14), to respondents' complaint; such grantees are joint venturers, who are members, with said one-quarter undivided ownerships in a joint venture assocation.

In appellant's March 25, 2010 filed AFFIDAVIT. .RE OBJECTIONS AND OPPOSITION TO PLAINTIFF MOTIONFOR SUMMARY JUDGMENT, 12 pages, (R: 168-179), he attachedas EXHIBIT 1., certified copies of the JOINT VENTURE AGREEMETN AND LIMITED POWERS OF ATTORNEY TO CLOSE ESCROW, (R: 180-183).

Respondents have never put into their complaint or Thomas Ulrich's AFfidavit for summary judgment any evidence that appellant was not a joint veturer with siad other three (3) initial joint venturers. Respondents' averments in their complaint is more than specious, stating: "4. On information and blief, Bach claims an interst in the following described real proper located in Teton County, Idaho, and situate to the south of

Ulrich Property (the 'Bach Property'); " (R: 3)

So why wasn't the PEACOCK 40 ACRE Joint venturer pacel property owners not served with process and made the indispensible party defendants? Respondents answer is found in REPLY MEMORANDUM, to their Motion for summary judgment, whrein they cited Tower Asset Sub. Inc., v. Lawrence 143 Idaho 710 714, that "joinder of all parties with an interest in the subject matter of the suit is not requiredk rather, only those who have an interests in the objects of the suits should be joined." Respondents blatantly and corruptly ask the district court judge to look the other way despite they said

> "Altough the other property owners of the Bach Property may have an interests in the subject matter of the suit, a property owners, only Defendant has attempted to interfere with Plaintiffs' interest in the property. Consequently, the other property owners do not have an interest in the object of the suits. Therefore, the other owners of the Bach Proerpty are not indispensble parties." (Supp R; vol ;:009)

But a Joint Venture is in the nature of a partnership, subject to the laws of partnership so far as substantival rights are concerned. Forbes v. Butler, 242 P. 950, 956; Most importantly, joint venturers stand in a fiduciary relationship and duties to each others Boyd v. Head 443 P.2d 473, 92 Idaho 389. Therefore a joint venture is not an entity separate and apart from the parties composing it. Clawson v. Gen'l Insur. Co. 90 Idaho 424, 412 P.2d 597. Among the essential elements of a joint venture is the right of each member to voice, an equal right of control, of the direction of the enterprise. Easter v. McNabb 514 P.2d 604, 97 Idaho 180.

When respondents did not have appellant personally served, (Page 5-7, supra), they also failed to comply with I.R.C.P. Rule 3(b) which mandates/requires a defendant to be named "as a person in a representative capacity. . .(he) is made a party to the action" or in an "action against a partnersip or unincorporated association." Also under I.R.C.P., Rule 4(d)(4)(B) must be complied with. In Legg v Barinaga, 92 Idaho 225, 440 P2d 345, a partnership, and individual members thereof were ordered to be made parties defendant to the action originally commenced against one member of the joint venture and no summons was ever served on any of the added parties nor upon the partnership; a valid judgment could not be rendered against the partnership nor against any individual partner.

It is well known by respondents and their counsel, that Milan and Diana Cheyovich, as an undivided one-quarter owner of said Peacock Parcel live in Southern California. If Wayne Dawson, is to be still an equal one-quarter owner he lives in Chico, Northern California, while Jack McLean is deceased and without any estate of personal representatives, but whatever daughter of his is still alive, she lives (both of them) in Canada.

Such indispensible parties, per I.R.CP, Rule 19(a) must be originally named in a new complaint by the resondents and the present complaint must be dismissed with prejudice.

The foregoing pleading and service of all indispensible parties. who still may have ownership interests in Peacock , were known to respondents and most particularly Judge Simpson. They all invited error. State v. Pentico (Id App2012) 265 P.3d 519, 528-29.

But did the resondents even have "ANY" equitable remedies or were they required to plead whatever counts/claims they sought as legal remedies which were available, adequate and immediate? Yes is the Answer, and appellant cited not just the Iron Eagle Dev. Quality Designs Systems, Inc. 134 Idaho 357, 65 P.3d 509, 514, (see page 7, supra reasserted herein in full, but more significantly the following cases;

1. Suchan v. Rutherford, 90 Idaho 288, 295, 410 P2d 434

22. Walkin v. Paul (Idaho 1973) 511 P.2d 781, citing and Suchan v. Rutherford, supra, ("The basic underlying rul rule is --equity will not intervene where the aggrieved party has a plain, speedy, adequate and complete remedy at law.")

3. Gardner v. Fliegal (1969) 92 Idaho 767, 450 P.2d 901 (Although the Idaho Suprme Court held, no on legal remedies at law dealing with easements, but auxillary to that, an "easement is a right in the land of another; (and) one cannot have an easement in his own land.") (This case along with others expanding such rule, set forth, infra, page , preclude entirely respondents from even claiming a quiet title, declartory relief and injunctive relief claims, where they never had any legal title granted to them over appellant's 40 are Peacok Parcel, respondents never took possession, nor made any knowledgeable use, management or operation of their contended easement over appellant's Peacok Parcel, and more significantly, by the Gardner case and those cited, infra, page , by operation of law, the doctrine of merger, extinquished and destroyed any rights, claims or assertionss whatsoever, to any easement across appellant's 40 acre Peacock Parcel.

As will be cited and analyzed infra, respondents deceit and deception on contrivedly creating a false easement over the Peacock Parcel, was in flangrant violation of the Idaho's Statute of Frauds, I.C. 9-505(4), because "an express grant of an easement cannot be created by parol. Abbott v. Nampa Sch Dist No 131, 119 Idaho 544; (see infra)

Respondents complaint and the affidavit of Thomas Ulrich did not plead any justifiable reasons for not joining and serving all indispenaible parties who are joint venturers with appellant in Peacock 40 Acre Parcel. (Milan & Dina Cheyovich were never named nor served)

The obvious reasons for avoidance to have personal service and inclusion of the joint venture in thair lawsuit is that it subjects, particularly Wayne Dawson, should raise any lack of possible standing or capacity for the two daughters of Jack McLean, long deceased, to be served and brought into the action; such would insure appellant his due process and equal protection, procedural and substantive rights to bringe cross-complaints and/or thirdy party complaints, against Dawson and said McLean's daughters, if they still have any standing herein.

The entire complaint as filed and unprovenly persecuted against appellant herein, reveals the mindset of insurance legal policy and possible involvment of Wayne Dawson and his wife, Donna Dawson, satill defendants, in Teton CV 01-265, which is still pending before this Idaho Supreme Court per a petition and submitted memorandum in supportthereof, of a petition for rehearing.

The long delays and stalling/avoidances by this Idaho Supreme Court, in refusing to rule, admit and reinstate Judge Jon Shinrdling's JOINT MEMORANDUM DECIONS AND QUIETING TITLE JUDGMENTS OF Sept 19, 2007, Nunc Pro Tunc, and restore appellant and the Cheyovich's sorely as the only rightful owners of the Peacock 40 Acres Parcel, waxes and wanes, more than arbitrarily,

void, and patently corrupt decisions by Judge SImpson, in proceeding with absolute lack of and/or want of jurisdiction to destroy appellant's and the Cheyovich's ownership, economic and buiness pursuits of their sole ownership of the Peacock 40 acre parcel.

To more succintly cover respondents utter failures to file a valid, properly noticed and legally sufficient motion for summary judgment, per I.R.CP. Rules 56(a)(c)(d) and (e), this argument appeal portions, addresses the utter LACK of subject matter jurisdiction and the utter failure of Respondents to state any viable causes of action for (1) quiet title, 2) declaratory relief, 3) preliminary injunction & permanent injunctions.

2. COMPLAINT'S FAILURE TO STATE ANY CAUSE OF ACTION.

An express grant of an easement as claimed by the respondents, cannot be created by "Parol" Abbott v. Nampa School District No 131 119 Idaho 544, 808 P.2d 1289 (Ct App) Abbott, etc. v. Nampa ,etc, 199 Idaho, holds clearly and controlling: "An easement can be created only by a person who has title to or an estate in the servient tenement. An easement may not create a right the the grantor did not possess. The fact that a person attempting to impose an easement intends to acquire the title subsequently and in fact does not do so makes no difference. . ."

Most significantly controlling and applicable is the Rule "An easement is a right in the land of another; one cannot have an easement in his own land." Gardner v. Fliegal (1969) 92 Idaho 767, 452 P.2d 901. (see also Sinnett v. Werelus, 88 Idaho 514, 365 P.2d 952, cited and followed in Abbot v. Nampa Sch. Dist. No 131, 119 Idaho 544 , 808 P.2d 1289

The Abbott v. Nampa School case, supra, applied the Doctrine of Merger, citing not only Sinnett v. Werelus, supra, but a Nevada case; Breliant v. Preferred Equities Corp 109 Nev 842, 858 P.2d 1258 --"Where one party acquired title both servient and dominant tenements, the easement merges into the fee of the servient tenement."

The Doctrine of Merger of both the servient and dominant temements occurred on June 9, 1994 when appellant along with his original joint venturers were granted by Teton West Corporation's Warranty Deed to the Peacock 40 acres Parcel. Whatever argument made by respondents to the contrary is utterly false, deceptive and in violations of I.R.C.P. 11(a)(1). On said same date, not only did appellant and his cojoint venturers know of respondents' existence nor of their purchase over two (2) sixs (6) months later grant of respondents' trustee grant deed, was filed on December 11, 1996. Again on this latter date, there was no granted, reserved, nor implied easement as respondents so contrivedly and deceptively fabricated. Moreover, respondents own deeds filed/recorded December 11, 1996 also by the Doctrine of Merger was not deeds or instruments which created any easement over appellant's Peacock Parcel, nor even any part of their own 39 acres to the North of appellant. (See Page P. 2., supra).

Both the the Peacock Parcel and the respondents have no easement or right of way of 60 foot width or any width whatsoever within the western boundary of their respective parcels.

For respondents attorneys not to have known such legal merger doctrine and legal effect and undisputable fact more than boggles the mind; it is an admission of actual fraud and

proves all the elements and factors that establish a prima facie cause/count for intentional misrepresentation. (It cannot be further avoided, that respondents' summary judgment motion did not give the required notice, specificity for the court to even consider let along embibe itself of whether respondents' summary judgment motion included that of appellant's affirmative answers and counterclaims. It didn't! (See supra, pages 16, par. 4 through Page 18, paragraph 14)

But there are two (2) more additional factors of deception and deceit by respondents, to wit:, (1) The warranty deed issued to appellant and his joint venturers was vague and ambiguous on its face and in its application. No parol evidence was pleaded nor presented in the complaint to avoid the absolute applications of the Statute of Frauds, I.C. 9-505; subparagraph 4, which reads: "4. An agreement for the leasing, for a longer period than on (1) year, or for the sale, of real property of an interest therein, and such agreement made by an agent of the sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party to be charged."

The object of the statute of frauds is to prevent potential fraud by forbidding disputed assertions of enumerated kinds of contract without any wirtten bais Frantz v. Parke, 111 Idaho 1005, 729 P.2d 1068 (Ct.App. 1986). The failure to comply with the Statute of Frauds renders an oral agreement, ifthere was one, unenforceable, both in anaction at law for damages and in a suit in equity for specific performance. Hoffman v. SV Co. 102 Idaho 187, 628 P.2d 218 (1981).

The second factor, (2), the Illegality of any contract or even a warranty or grant deed can be and mustbe raised at any stage of the litigation; the Idaho Supreme Court, and the district court judge has the duty to raise illegality of Ulrich's two deeds to create a nonexpressly granted easement that is barred by the Statute of Frauds. Pines Grazing Association, Inc., v. Fyling Joseph Ranch LLC 265 P3d 1136, 1139-1142. Thusly, a jurisdictional question is so fundamental, that the appellate and district court, must address the issue of jurisdiction if no party has raised it. State v. Johnson (Nov 2011) 266 P.3 1146

Appellant will not tell nor state for respondents' benefit and use, what legal remedies or even equitable remedies might be available, becuase a-ppellant believes on the status of the record the attempted wrongful offers for summary judgment; there aren't any at law or equity. If even there were theapplicable statutes of limitation Of five years and three years are long ago expired and preclude any attempt to amended the complaint against appellant, either at law or in equity. Such pleading attempt would be further misrepreentation and other claims being violated of appellant's ownership in the Peacock 40 Acre Parcel.

Respondents failed to plead any viable claim or cause of action for quiet title, declaratory relief and injunctive relief. The failure to plead or prove a cause of action can be raised at any time IRCP, Rule 12(g)(4). But respondents did not go and prevail at trial; theirs was a wholly unsupported summary judgment motion per IRCP, Rule 56(a),(c)(d) and (e).

Even before respondents summary judgment motion, Judge Simpson's Memor. Decision Re; Plaintiffs' Motion for Preliminary Injunction, etc., (R: 47-99) which included as Exhibits A and B, Judge Simpson's ORDER GRANTING GGRANTING WAYNE DAWSON MOTION FOR RELIEF FROM JUDGMENT IN Tetonc CV 2001-265 (R: 74-93) and SECOND AMENDED JUDGMENT, in that same CV 2001-265, (R 96-99), was completely in error in all regards, How could Judge Simpson have failed to see that the doctrine of merger via the Abbott case, supr and the Idaho Statute of Limitations, I.C. 9-505(4) did not create an utter lack of jurisdiction and a complete failure to have plea and even via any trial on the complaint's averments be allowed to go to the trial.?

The MEMORANDUM DECISION was not just in error but wrong as to the fact there was a lack pf personal jurisdiction and subjecat matter jurisdiction, in that:

1. He in error concluded the Court had personal jurisdiction over Appellat, but he never rules or acknowledged that Appellant was in a fiduciary joint venture association with the Cheyovich trustees of their FAmily Trust. Neither appellant nor the Cheyovich had been named and served nor the Joint Venture association of Peacock Parcel owners. (See errorsat R: 59)

2. He found that the complaint was properly verified when Thoms Uliich stated solely on information and belief the truth of his averments. But the truth was that there was no easement at all granted to respondents because the Abbott , case doctrine of merger had more than precluded extinquished and void any such claim or evidence. (See error 59-60) At no point of respodents' complaint did Thomas Ulrich state under oath, notarized that he personally knew of the facts of his own personal knowledge. The verification by him was specious, hearsay and without proper under oath statements per Rule 56(c)(d)(e).

3. The warranty deeds, Ulrich 1-A and 1-B, were evn acknowledge by Judge Simpson as having been executed and then purpoerted record a year and over four months after a-pellant and his cojoint venturers record their's on June 9, 1994. (See errors R 60-64, Judge Simpson even gets the wrong dates of Appellant's deed from Teton West Corporation.)

4. Judge Simpson does acknowledge that appellant cited and reilied upon the Iron Eagle Deve. LLC case, 138 Idaho 487, but without any citation of authority rules "Bach does not define(d) 'adequate legal remedy' in this cae. ."; and rules that appellant must "assert what other legl remdy is avaiiable which would requries that this Cort disregard the injunctive relief the Ulrihh's seek." (R: 64-65 (At this particular point Judge Simpson had become an attorny and advocate and is recusal should have been sua sponte. He was more than an unbaised judge--he was without knowledge of case law and the application of the Idaho Statute of Frauds, I.C.9-505(4).)

5. Judge Simspon refuses to hear appellants motions whichere ept 30, 2010, to which no opposition nor objections had been made or raised by respondents. Thus 15 dasy after appellant's motions were filed, they bee noticed although there were for October 15, 2010 and he directs they be refiled separately. (R: 65966) Judge Simpson didn't want to hear from appellant and his timely served and notice motions.

6. Via his Ex A and B, attached from the Teton CV 01-265 case he does acts and relies on a nonfinal, but still appela able case, and through his judicial suggestions and ruiings which he can't reverse, he seeks to enforce and implement said EXIBITS A & B into respondents pleading, which the resondents never do and avoid completely, being protected and given legal umbrella coverage by Judge Simspon igranting said Memorandum Decision, (Error, R:55-56)

When the times comes to hear respondents summary judgment motions, the foregoing biased, prejudiced and overlly premindset

rulings and order is granted by Judge Simpson, in his ORDER GRATING PLAINTIFF'S MOTIONFOR SUMMARY JUDMENT, filed June 61, 2011. (R; 197-226) The initial judgment was filed June 6, 2011 (R: 227-230) However an ORDER DENYING DEFENDANT JOHN BACH's RULE 59 adn 60 MOTION AND GRATNING IN PART PLAINTFF'SREQUEST FOR ATTORNEY FEES AND COSTS, was filed Sept 13, 2011 (R;254-273) Without notice or any hearing set, heard or ruled upon, a FIRST AMENDED JUDGMENT, filed Octber 21, 2011 was filed. (R: 278-

ALL OF THE FOREGOING ORDERS AND ORIGINAL JUDGMENT AND FIRST AMENDED JUDGMENT ARE APPEALLED HHREIN AND TO BE OVERTURNED, VACATING THE ORDER GRANTING SUMMARY JUDGMENTS FOR PLAINTIFFS AND THE FIRST AMENDED JUDGMENT, WHICH INCLUDES GRANTING RESPONDENTS OVER $26,366.72; and retruning to the district court the pleaded affirmative defenses and counterlcaims, which respondent's summary judgment motions did not mention, address nor submit any affidvits, admissible, rlevant and applicable to eliminate the genuine elements of material facts raised by said appellants' pleadings. Verbillis v. Dependable Appliance Co. (Ct.App 1984 107 Idaho 335, 689 P2d 227.

Under Rule 56(c) , appellant was not required to even file any counter affidavits, but he did both in his verification ANSWER AFFIRMATIVE DEFENSES & COUNTERLCAIMS (R:105-115) and his AFFIDAVIT with Exhibits filed March 25, 2011, (R: 168-189) Thusly, appellant more than disputed and put into issue the overwhelming existence of genuine issues of material fact and the lack of subject matter and even lack of personal urisdicion issues.

The ORDERS GRANTING SUMMARY JUDGMENT, ALONG WITH THE original JUDGMENT And FIRST AMENDED JUDGMENT must be reverse, vacate with

instruction to the district court to dismiss with prejudice respodents' entire four (4) counts and reverse the monetary judgment granted respondents of $26,366.72.

The remaining ISSUES Number 3 and 4, supra, are not withdrawn nor waived or abandoned, as both the health of appellant and his physicall proclivities have precluded him, from competing his arguemtsnand analysis of citations, cases and statutes, etc.

RESPECTFULLY SUBMITTED, July 30, 2012

JOHN N. BACH

CERTIFICATE OF SERVICE BY OVERNIGHT AND REGULAR MAIL:

I the undersigned, hereby declare that on this date, July 30, 2012, Iddid mail overnight via delivery the next day in Boise, Idaho, P.O.83720-101,

and Original and six (6) copies and one (1) unbound copy, to Clerk, Idaho Supreme Court, P.O. Box 83720, Boise, Idaho, 83720-010: and

Two copies to Charles A. Homer, Esq.
P.O. Box 50130, Idaho Falls, ID 83405.